

ANTHONY MCKNIGHT
CLAIMANT

:

CORAM

:

WORKERS' COMPENSATION
 COMMISSIONER
 HON. STEPHEN B. DELANEY

V.

STATE OF CONNECTICUT/
 DEPARTMENT OF CORRECTIONS
EMPLOYER

:

STATE OF CONNECTICUT

GAB ROBINS NORTH AMERICA, :
 INC.
INSURER

FILE NO. 300008112

RESPONDENTS

:

OCTOBER 27, 2010

APPEARANCES:

Anthony McKnight, P. O. Box 304, West Haven, CT 06516, appeared pro se.

Donna Summers, Assistant Attorney General, P. O. Box 120, Hartford, CT 06141-0120, represented the Respondent-Employer, and GAB Robins North America, Inc.

FINDING AND DISMISSAL

Pursuant to statutory notice to all parties, a Formal hearing was held before the undersigned Commissioner at the Workers' Compensation Office, First District, Hartford, on May 5, 2010. The record was closed on July 6, 2010, upon the filing of briefs and/or proposed findings.

ISSUES:

- a) Wrongful Discharge/Discrimination – 31-290a

BACKGROUND:

The noticed issued for this Formal hearing conducted on May 5, 2010, was a claim pursuant to Connecticut General Statutes Section 31-290a. A discussion on the record, and by agreement of the parties, claims for benefits pursuant to Connecticut General Statutes 5-142(a) and 5-169(i) were the applicable issues for this Formal hearing. The Claimant, who appeared pro se, was offered the opportunity to retain counsel but declined. The parties further agreed that no testimony will be offered and documentary evidence would be submitted to the undersigned.

BASED UPON THE EVIDENCE PRESENTED, THE FOLLOWING FACTS ARE FOUND:

1. The Claimant, Anthony McKnight (hereinafter referred to as the Claimant), contends that pursuant to Connecticut General Statutes Section 5-142(a) he is entitled to benefits from September 19, 1993 through the date of the Formal hearing. In addition, he contends that pursuant to Connecticut General Statutes Section 5-169(i) that as he qualifies for disability benefits under Connecticut General Statutes Section 5-142(a), he is entitled to be credited for service time and shall not be deemed to have retired until he elects to do so.

2. Administrative notice is taken of all exhibits, trial transcripts, notices, Forms, pleadings, Awards, Orders, Superior Court and Appellate Court decisions in this matter.

3. On September 4, 1989, the Claimant sustained an accepted and compensable injury to his right shoulder which arose out of and in the course of his employment with the Respondent State of Connecticut (hereinafter referred to as the Respondent). (Claimant's Exhibit G)

4. On April 26, 1993, the Claimant sustained accepted and compensable injuries to his neck and right shoulder which arose out of and in the course of his employment with the Respondent. (Claimant's Exhibit B)

5. Pursuant to Connecticut General Statutes Section 5-142(a), the Claimant was paid temporary total benefits at one hundred (100%) percent relating to the April 26, 1993 injury.

6. Administrative notice is taken of an approved Form 36 on May 2, 1994, discontinuing the Claimant's Temporary Total Benefits. This approval was not appealed.

7. Administrative notice is taken of a Finding and Dismissal issued on May 21, 1998, by Commissioner Michael Miles relating to the Claimant's Connecticut General Statutes Section 31-290a claim. This Finding and Dismissal was subsequently affirmed by the Appellate Court. (Claimant's Exhibits G and L)

8. The pertinent findings and exhibits in the May 21, 1998 Finding and Dismissal as they relate to this matter are:

- a) The Claimant voluntarily resigned from State service on May 23, 1995. (Respondent's Exhibit 8)
- b) The Claimant did not sustain his burden of proof that he was discharged or otherwise discriminated against for filing a workers' compensation claim.

9. The Claimant offered no medical evidence which support his claim for Temporary Total Benefits from November 18, 1997 to the date of the Formal hearing.

10. The Claimant offered no evidence that he maintained his share of life or health insurance premiums. (Claimant's Exhibit K)

11. Evidence was introduced which demonstrates that the Claimant was credited for State service time for the period that he was paid Connecticut General Statutes Section 5-142(a) benefits relating to his 1993 injury and was credited for State service time up to the date of his voluntary resignation on May 23, 1995. (Claimant's Exhibits A, D, F and G; Respondent's Exhibit 8 from the 1997 Formal hearing trial)

12. Evidence was introduced which demonstrates the Claimant applied for a hazardous duty retirement. His application was denied for his failure to have sufficient time credits to qualify. (Claimant's Exhibit A; Respondent's Exhibit 2)

13. The Claimant contends that he has sustained his burden of proof based upon the above and Connecticut General Statutes Section 5-142(a) which was in effect on his date of 1993 injury that he is entitled to benefits from September 19, 1993 through the date of the Formal hearing which results in additional service time being credited to him.

14. The Respondent contends that the Claimant has not sustained his burden of proof that he is entitled to benefits from September 19, 1993 to the date of the Formal hearing.

**WHEREFORE, BASED UPON ALL THE EVIDENCE PRESENTED
BEFORE ME, I HEREBY FIND:**

A) I have reviewed, considered and weighed Claimant's Exhibit A through P, Respondent's Exhibits 1 and 2, briefs, documents and Memorandums submitted by the parties.

B) Administrative notice is taken of all exhibits, trial transcripts, notices, Forms, pleadings, Awards, Orders, Superior Court and Appellate Court decisions in this matter.

C) On September 4, 1989, the Claimant sustained an accepted and compensable injury to his right shoulder which arose out of and in the course of his employment with the Respondent State of Connecticut.

D) On April 26, 1993, the Claimant sustained accepted and compensable injuries to his neck and right shoulder which arose out of and in the course of his employment with the Respondent.

E) Pursuant to Connecticut General Statutes Section 5-142(a), the Claimant was paid temporary total benefits at one hundred (100%) percent relating to the April 26, 1993 injury.

F) Administrative notice is taken of an approved Form 36 on May 2, 1994, discontinuing the Claimant's Temporary Total Benefits. This approval was not appealed.

G) Administrative notice is taken of a Finding and Dismissal issued on May 21, 1998, by Commissioner Michael Miles relating to the Claimant's Connecticut General Statutes Section 31-290a claim. This Finding and Dismissal was subsequently affirmed by the Appellate Court.

H) The pertinent findings and exhibits in the May 21, 1998 Finding and Dismissal as they relate to this matter are:

- a) The Claimant voluntarily resigned from State service on May 23, 1995. (Respondent's Exhibit 8)
- b) The Claimant did not sustain his burden of proof that he was discharged or otherwise discriminated against for filing a workers' compensation claim.

I) The Claimant offered no medical evidence which support his claim for Temporary Total Benefits from November 18, 1997 to the date of the Formal hearing.

J) The Claimant offered no evidence that he maintained his share of life or health insurance premiums.

K) Evidence was introduced which demonstrates that the Claimant was credited for State service time for the period that he was paid Connecticut General Statutes Section 5-142(a) benefits relating to his 1993 injury and was credited for State service time up to the date of his voluntary resignation on May 23, 1995.

L) I find, and conclude, that the Claimant has not sustained his burden of proof that he is entitled to Temporary Total Benefits for the period of September 19, 1993 through the date of the Formal hearing as they relate to his accepted April 26, 1993 injury. Succinctly, no credible evidence was offered which would support this claim.

M) While acknowledging the Claimant is both intelligent and articulate, the undersigned is not in agreement with his reading and interpretation of Connecticut General Statutes Section 5-142(a), which was applicable on the date of injury in 1993. A properly filed Form 36 was approved on May 2, 1992 changing the Claimant's Temporary Total Benefits to Temporary Partial Benefits. No appeal was taken from the approval. The Claimant was and is not totally disabled which would entitle him to those benefits he claims under Connecticut General Statutes Section 5-


142(a). Lastly, the Claimant voluntarily resigned from State service on May 23, 1995.

**WHEREFORE, IT IS ORDERED, ADJUDGED, DECREED AND
AWARDED THAT:**

(I) The Claimant's claims for benefits pursuant to Connecticut General Statutes Section 5-142(a) is DISMISSED.

(II) The Claimant's accepted and compensable injuries of September 4, 1989 and April 26, 1993 shall remain open for further claims he may assert.

IT IS SO ORDERED.


Stephen B. Delaney, Commissioner
Workers' Compensation
First District

